THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 26776 OF 1995

DATED: 28-11-2006

BETWEEN:

S. Sankar Rao, S/o. Chittibabu

… Petitioner

and

Government of Andhra Pradesh,
Rep. By its Secretary to Government
And three others

… Respondents

THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 26776 OF 1995

ORDER:

This writ petition is filed seeking a writ of Mandamus to declare G.O.Ms.No.466, Food and Civil Supplies (III) Department, dated 07-11-1995 in so far as the direction to regularize the petitioner as attender instead of junior assistant, is concerned, as illegal, unconstitutional and violation of Articles 14, 16 and 21 of the Constitution of India and for a consequential direction to regularize the petitioner's services as Junior Assistant with effect from 16-06-1989 the date on which similarly situated persons of second respondent Corporation were regularized.

In the affidavit filed in support of the writ petition, the petitioner averred that he was appointed as Junior Assistant in the third respondent corporation on 22-07-1982 and paid with Rs.18/- per day as daily wage, which was later enhanced to Rs.45/-per day. At the time of filing of the writ petition, he was paid a sum of Rs.45/- per day.

The state Government issued G.O.Ms.No.448 dated 16-06-1989 regularizing the daily wage employees working in second respondent and third respondent. There were number of employees, who got the benefit under the said G.O. though they have passed 10th Class and Intermediate.

The first respondent issued the impugned G.O.Ms.No.466, Food & Civil Supplies (III) Department dated 07-11-1995 where under the services of 24 temporary employees were regularized in the posts of Assistants Grade III and all of them had either matriculation or intermediate qualifications. However, the petitioner's case was not considered by applying the said G.O. Assailing the action of the first respondent in not regularizing the petitioner's services as Assistant Grade III, the present writ petition is filed.

The petitioner's grievance is that though he was similarly situated as that of the 24 persons, whose services were regularized as Assistants Grade III, but the said benefit has not been given to him.

Sri C.V.Bhaskara Reddy, learned counsel for the petitioner submitted that the petitioner is similarly placed to the said 24 persons, who were appointed as Assistants Grade III, though they had either intermediate or metriculation qualification and hence the action of the respondents 1 and 2 in not appointing the petitioner as Assistant Grade III is discriminatory and in violation of Article 14 of the Constitution of India.

Sri V.T.M. Prasad, learned standing counsel submitted that some of the employees working under third respondent Corporation earlier filed W.P.No.15847 of 1990 along with some other persons and the same was disposed off by this Court on 31-01-1995 with a direction that their cases for regularization shall be considered in accordance with G.O.Ms.No.212 dated 22-12-1994. He further submits that one of the requirements stipulated in G.O.Ms.No.212, is

that a candidate shall possess the educational qualifications required for being appointed in the post in which they seek regularization. He submits that for the post of Assistant-Grade III, graduation is the required qualification and since the petitioner does not hold the said qualification, he was appointed as attender.

It is not in dispute that the present petitioner was not a party to W.P.No.15847/90. But earlier the petitioner filed W.P.No.13214 of 1985 before this Court and the same was disposed off on 06-10-1988 directing the respondents to reinstate the petitioner with continuity of service and other benefits except the arrears of the salary. Learned counsel for the petitioner says that as per the directions given by this Court in W.P.No.13214/85, the case of the petitioner shall be considered. His contention is that G.O.Ms.No.466 under which the services of 24 persons were regularized, does not stipulate the qualification of graduation for the candidates to be appointed as Assistants, Grade III and therefore, the second respondent has not insisted on the qualification of graduation in respect of 24 employees while regularizing their services as Assistants-Grade III, and there is no justification to insist on the petitioner to possess the said qualification in terms of G.O.Ms.No.212.

I see force in the contention of the learned counsel for the petitioner. A reading of G.O.Ms.No.448 dated 16-06-1989 shows that the persons who are to be appointed shall fulfill the qualification prescribed for the post and that in case they do not fulfill the qualifications required, they shall acquire the said qualification within a period of two years from the date of issue of the order of regularization and in case they failed to acquire the said qualification with in the stipulated period, they shall not be eligible for future promotion.

A counter affidavit filed on behalf of the respondents does not give any satisfactory reason as to why the petitioner's case has not been considered under G.O.Ms.No.448. Except saying that the said

G.O. was superceded by G.O.Ms.No.212, it is not known as to why the petitioner's case has not been considered along with the said 24 persons under G.O.Ms.No.448, where under their cases for appointment to the post of Assistants, Grade III were considered and were appointed though they did not hold the qualification of graduation. While G.O.Ms.No.448 was issued in the year 1989, G.O.Ms.No.212 was issued in the year 1994. There was thus a time gap of about five years between two G.Os. But, no reasons are assigned for the failure on the part of the second respondent in considering the case of the petitioner in terms of G.O.Ms.No.448. Had the petitioner also been considered along with the other 24 persons before G.O.Ms.No.448 was superceded by G.O.Ms.No.212, he would have been entitled for appointment as Assistant Grade III with out possessing graduation qualification as in the case of those 24 persons, whose services were regularized in terms of G.O.Ms.No.448, dated 16-06-1989.

The petitioner was not a party to W.P.No.15847/90. He is therefore not bound by the direction that the cases of the petitioners therein shall be considered for regularization in terms of G.O.Ms.No.212. Undisputedly, the petitioner was eligible for being considered for promotion along with the 24 persons much earlier than G.O.Ms.No.212 was brought into force. Doctrine of equality and fairness require that the petitioner's case shall also be considered in terms of G.O.Ms.No.448 dated 16-06-1989.

In view of the same, the writ petition is allowed directing respondents 1 and 2 to extend the benefit of G.O.Ms.No.448 dated 16-06-1989 to the petitioner by considering his case for appointment as Assistant, Grade III with effect from the date on which 24 persons were appointed as Assistants, Grade III under G.O.Ms.No.448 dated 16-06-1989 and for extension of all the attendant benefits attached to the said

post of Assistant, Grade III. No order as to costs.

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C.V. NAGARJUNA REDDY, J.

Dt: 28-11-2006
Rns.